



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 4432-00
26 December 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 4 January 1968 at the age of 18. Your record reflects that on 26 November 1968 you were convicted by summary court-martial (SCM) of failure to obey a lawful order, assault, and a day of unauthorized absence (UA). You were sentenced to reduction to paygrade E-1, a \$50 forfeiture of pay, and restriction for 30 days. On 10 December 1968 you received nonjudicial punishment (NJP) for two specifications of breaking restriction and were awarded extra duty for a week. Shortly thereafter, on 18 December 1968, you began an eight day period of UA but your record reflects that no disciplinary action was taken for this offense. On 13 January 1969 you were convicted by SCM of a three day period of UA, seven specifications of failure to obey a lawful order, assault with a dangerous weapon/straight razor, and theft of a \$5 wallet. You were sentenced to reduction to paygrade E-1, confinement at hard labor for 30 days, and a \$46 forfeiture of pay.

Your record further reflects that you were UA from 24 to 30 January 1970, a total of six days, for which no disciplinary action was taken. On 13 February 1970 you received NJP for

failure to go to your appointed place of duty and two periods of UA totalling seven days. The punishment imposed was a \$60 forfeiture of pay, and correctional custody and restriction for 14 days. On 27 February 1970 you began a four day period of UA that was not terminated until 3 March 1970. Your record again reflects that no disciplinary action was taken for this period of UA.

On 5 March 1970 you began a 53 day period of UA that was not terminated until 27 April 1970. On 28 April 1970 you began a 27 day period of UA that was not terminated until you were apprehended by civil authorities on 25 May 1970 for an automobile accident. Subsequently, on 9 June 1970, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for these two periods of UA totalling 80 days. Your record reflects that prior to submitting this request for discharge, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 24 July 1970 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, good post service conduct, character reference letters, criminal record check, and the fact that more than 30 years have passed since you were discharged. The Board further considered your contention that you would like your discharge upgraded so that you may obtain medical benefits for lung cancer which resulted from your exposure to Agent Orange while you were serving in Vietnam. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the serious nature of your misconduct in both the military and civil communities, your frequent and lengthy periods of UA, and your request for discharge to avoid trial for two of these offenses. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for a clemency discharge was granted and should not be permitted to change your discharge now. Further, the Board noted that there is no evidence in the record, and you submitted none, to support your contentions. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director